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FILED

FEB 19 2013

**SECRETARY, BOARD OF
OIL, GAS & MINING**

**BEFORE THE BOARD OF OIL, GAS AND MINING
DEPARTMENT OF NATURAL RESOURCES
STATE OF UTAH**

<p>UTAH CHAPTER OF THE SIERRA CLUB, et al,</p> <p>Petitioners,</p> <p>vs.</p> <p>UTAH DIVISION OF OIL, GAS & MINING,</p> <p>Respondent,</p> <p>ALTON COAL DEVELOPMENT, LLC and KANE COUNTY, UTAH,</p> <p>Respondent/Intervenors.</p>	<p>DIVISION'S MEMORANDUM REGARDING THE STATUS OF THE UTAH COAL PROGRAM RULES GOVERNING AN AWARD OF ATTORNEY FEES</p> <p>Docket No. 2009-019 Cause No. C/025/005</p>
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The Division of Oil, Gas and Mining ("Division") by and through its attorney of record, hereby files this MEMORANDUM REGARDING THE STATUS OF THE UTAH COAL PROGRAM RULES GOVERNING AN AWARD OF ATTORNEY FEES.

INTRODUCTION

Alton Coal Development, LLC, ("Alton") has filed a Petition seeking an award of attorney fees from the Utah Chapter of Sierra Club, Southern Utah Wilderness Alliance, Natural Resources Defense Counsel and National Parks Conservation Association, (hereinafter collectively "NRDC"). The Parties stipulated that prior to holding a hearing on

the facts supporting the claim and submitting evidence regarding the amount of any claim, they would first ask the Board to determine the legal standard to be applied when determining if an operator is entitled to an award of fees from an unsuccessful citizen plaintiff in an action challenging a decision to approve a coal mine permit.¹ Although the Division elected not to join in the argument, the briefing schedule allowed an opportunity for the Division to file a response to the pleadings no later than February 18, 2013.²

The Division has elected to file this memorandum to clarify that the Utah Coal Program currently includes the rules governing an award of attorney fees as originally approved. This conclusion is based on the superseding and overarching requirement under the Surface Mining Control and Reclamation Act (“SMCRA”), 30 U.S.C. §§ 1201-1238 (2009) for federal oversight to assure continued consistency of an approved state program with the Act; and on the lack of any evidence of an action by the State intending to change the attorney fee rule as originally approved, or by the Office of Surface Mining approving a change in the rule. Accordingly, the Division intends to take the necessary and appropriate steps to reinstate the approved rule which continues to be part of the Utah Coal Program. The Division’s February 13, 2013 letter to Office of Surface Mining advising it of the Division’s conclusions and intentions is attached as **Exhibit A**. The Office of Surface Mining’s response letter sent February 15, 2013 affirming that they consider the rule part of the approved program is attached as **Exhibit B**. This memorandum does not address whether the Board may find other reasons that might require the application of a different rule to Alton’s claims in this case.

¹ See, Stipulation Regarding Motion to Lift Stay of Consideration of Fee Awards, Request for Leave to File Fee Petition and Briefing Schedule, filed 2013.

² This deadline was extended by email agreement until February 19, 2013 at 9:00 a.m.

STATEMENT OF FACTS

The Division has made an investigation concerning the discrepancy between the current published rules of the Board (Utah Admin. Code R641-R645), and the requirement for an attorney fee rule in the Utah Coal Program as originally approved. As a result of this investigation the Division found:

(1) The various documents submitted by the parties support the finding that on October 24, 1980, the Secretary of Interior ("Secretary") advised the State that its submittal was partially disapproved due to the absence of a provision for award of attorney fees consistent with 43 CFR Part 4.

(2) There is no evidence to suggest that the Board when adopting the rule did not comply with the then existing state law requirements for adopting rules³: a rule was proposed titled B-15 that was essentially the same as the federal rule at the October 24, 1980 Board hearing; this rule was part of the actions considered at the November 19, 1980 Board Hearing at which an opportunity for public comment was provided, and after which the rule was unanimously adopted.

(3) The proposed B-15 of the Board's Rules of Procedure as part of a set of rules submitted to the State Archives Office on December 9, 1980 and was included in Utah Coal Program submittal to the Secretary of the Interior for approval on December 22, 1980, and conditionally approved on January 21, 1981.

³ Administrative Rulemaking Act Utah Code §§ 63-46-1 et seq. adopted in 1973 and amended in 1975 required substantial compliance with requirements to provide twenty days prior notice; reasonable opportunity for comment; if a timely request was made, a public hearing; and publication of the rule by the State Archivist.

(4) It is undisputed that the Utah legislature pursuant to Utah Code § 40-10-6 granted to the Board exclusive jurisdiction under the law to adopt rules to govern the Coal Mining and Reclamation Act and required that any change must be done in compliance with the federal and state statutes and rules governing rule-making.

(5) There is no evidence that the Board at any time after approving the attorney fee rule was ever petitioned to re-consider or remove that rule, or that the Board on its own volition or otherwise ever intentionally took any action to eliminate the rule.

(6) There is no evidence that the Division ever submitted to OSM for approval any change in the rules that would omit the attorney fee rule that was adopted as a condition for approval.

(7) There is evidence to suggest that the omission of the attorney fee rule may have been inadvertent:

(A) At the time the rules were adopted there was not state-wide set of administrative rules, and the Division published a booklet that contained the Oil and Gas Conservation Act which included Oil and Gas rules and the Board's Rules of Practice but did not include rules for the mining program. It is reasonable to suspect that the Coal Mining Program's new attorney fee rule may have been omitted from the early versions of that booklet as a matter of convenience.

(B) In 1985 the Utah Rule Making Act significantly changed the requirements for codifying the rules and resulted in a requirement that all rules be compiled in a state-wide code. Since the Board Rules as published were for the oil and gas program failed to include

the Rule B-15 governing fees for coal mining program, this error may have been enshrined in the administrative code when it was compiled without notice by the Division and without notice to OSM.

(8) The only possible fact that might support a finding that the change was submitted and approved by OSM is the Division's request in 1995 that OSM approve changes to the statute and rules as a result of the adoption of the Utah Administrative Procedures Act and specifically the substitution of the term "adjudicative proceeding" in lieu of the term "administrative hearing" at *inter alia* Utah Code §40-10-22(3) and Utah Administrative rule R641-100- 100 and 100-200. OSM approved those changes. However, a careful review of the submittal and Federal Register analysis reveals that although OSM made a thorough review of each change in the rules, it did not consider or approve the absence of rules governing awards of attorney fees. The OSMRE in its February 15, 2013 letter to Director Baza confirmed that it did not intend its 1995 review and approval to include any review of the absence of an attorney fee rule.

ARGUMENT

1. **The Surface Mining Control and Reclamation Act (SMCRA) requires approval of a State program before the State is granted authority to administer the Act, and requires approval of any changes to the program before the change may become effective.**

SMCRA provides "Each state in which there are or may be conducted surface coal mining operations on non-Federal lands and which wish to assume exclusive jurisdiction over the regulation of surface coal mining and reclamation operations . . . shall submit to the Secretary, . . . a State program which demonstrates that such State has the capability of

carrying out the provisions of this Act and meeting its purposes through – . . . (7) rules and regulations consistent with regulations issued by the Secretary pursuant to this Act.” 30 U.S.C. § 1253(a).

After an initial denial of the state’s submitted program, the program as resubmitted on December 19, 1980 included rule B-15 that was properly adopted and was intended to govern any award of attorney fees. The rule was found to satisfy the federal requirement to be consistent with 43 CFR Part 4. The State of Utah’s program was conditionally approved on January 21, 1981 subject to the inclusion of this rule. There is no dispute about these facts.

Once a State program has been approved and a State has primacy, then any changes to the approved program require an approved amendment. This required approval applies to any changes that might affect the program, not just those initiated by the state agency. The process for a change begins with a required notice to OSM. “The State regulatory authority shall promptly notify the Director [OSM] of any significant events or proposed changes which affect the implementation, administration or enforcement of the approved State program. At a minimum, notification is required for – . . . (3) changes in the State law and regulations from those contained in the state program” 30 CFR 732.17(b)

Upon notification by the state agency, the Director is to determine if an amendment is required, and if he determines that an amendment is required, then the State regulatory authority has 60 days to submit a proposed written amendment. If the regulatory authority fails to do so, then the Director “shall begin proceedings under 30 CFR part 733 to either enforce that part of the State program affected or withdraw approval, in whole or in part, of the State program and implement a Federal program.” 30 CFR 732(f)

Most importantly and directly related to the circumstances of this rule, the regulations require: “[W]henever, changes to laws or regulations that make up the approved program are

proposed by the State, the State shall immediately submit the proposed changes to the Director as an amendment. *No such change to the laws or regulations shall take effect for purposes of a State program until approved as an amendment.*” 30 CFR 732(g) (emphasis supplied)

Thus, regardless of the means of any proposed change, there must be an amendment submitted and the amendment “shall not take effect” until approved. This is the only way to amend an approved program. It stands to reason that if an intentionally submitted amendment to a rule cannot take effect until approved, then any inadvertent change would also not “take effect for purposes of a State program until approved as an amendment.” As a corollary to this rule it follows that absent an approved change, the program rule as enacted must continue.

No one has alleged that the Board ever initiated a change to the attorney fee rule. It is also clear that there was no legislation directly intended to change the attorney fee rule. The most that has been argued is that the current version of the Utah Administrative Rulemaking Act (“Rulemaking Act”, Utah Code §§ 63G-3-101 to 702) has the effect through its various provisions of invalidating and making the rule unenforceable⁴. Even if Alton were correct that the legislature intended these provisions of the Rulemaking Act to invalidate an otherwise properly enacted rule that was inadvertently omitted from publication or review, such a state law could not “take effect” until approved by the OSM. As a matter of federal primacy, the legislature cannot directly revoke a provision of the approved Utah Coal Program and have that action take effect without the approval of OSM. See 30 CFR 732(g). Since this cannot be done directly, then it certainly cannot be the unintended result of

⁴ See, Letter from Snell & Wilmer to John Baza, Director February 11, 2013 citing to Utah Code 63G-3-202(1) and 502(2)(a). Attached as **Exhibit C**

legislation not intended to have that effect. In fact, among the provisions cited by Alton in its letter is Utah Code § 63G-3-502(2)(a) which mandates that every rule expires annually unless reauthorized by the legislature. However, this provision acknowledges the federal limitations of the Rulemaking Act to invalidate a federally required law by providing in the following section omitted from Alton's letter that provides an agency's rules do not expire if "the rule is explicitly mandated by a federal law or regulation;" Utah Code § 63G-3-502(2)(b)(i). Thus, the very section cited to invalidate the rule expressly excepts the rule as one required by federal law from its effect.⁵

The other arguments for the automatic termination or non-enforcement of the attorney fee rule based on the current Rulemaking Act are also subject to contrary interpretation. Rules do not automatically expire if they are not reauthorized every five years as required by Utah Code § 62G-3-305. First the Division of Rules needs to give notice of the need to review and republish the rule, allow for 120 extension if requested, then must published a notice that the rule has expired. Utah Code §§ 62G-3-305(5) and (8). The division of rules has taken none of these steps with regard to the attorney fee rule. The general statement and definition of a rule contained at section § 62G-3-202(1) provides that "a written statement is not enforceable unless it is adopted in accordance with the Chapter" also does not expressly invalidate this rule that was previously adopted and approved. Rather it only requires compliance with the requirements of § 62G-3-301(2) which in addition to other things requires "agencies shall comply with: . . . (c) applicable federal mandates;" Once again the Rulemaking Act acknowledges that it cannot invalidate the federally mandated attorney fee rule or make it unenforceable without complying with the requirements of the

⁵ As discussed *infra*, OSM mandated that such a rule be adopted.

federal law; which requires submitting such a change to OSM for approval; which all parties concede did not happen.

2. Since OSM has not approved a change to the attorney fee rule, the Division must enforce the program with the attorney fee rule as it was originally approved and address the need for republishing it as part of the Board's Rules.

The Division concludes that the rule continues to be part of the approved program and that the Division's duty is to correct the inadvertent omission by republishing it and incorporating it in the published rules. Arguably a formal rule-making action is not necessary since the rule has already been adopted and has never been revoked. Options available to the Division are filing a non-substantive change or requesting the division of rules to file a reenactment of the rules as allowed under Utah Code § 63G-3-403. As a means of providing transparency and giving notice of the reenactment, the Division proposes to proceed as it would in any action adopting a rule except that Board action would be limited to republishing the existing rule in the Utah Administrative Code.

It would be inappropriate to do more than republish the rule since any change in the rule would not be effective until it obtained OSM approval and thus a change in the rule would not cure the past inadvertent omission of the rule from the published program and would leave the Coal Program without a published version of its approved rule for attorney fees. If the Board were to desire to revisit the rule, it could do so after the current rule is republished. It could then propose modifications that would be submitted for OSM review but in the interim the existing rule would be clearly included as part of the published rules for the Coal Program.

SUBMITTED this 19th day of February, 2013.

Steven F. Alder

Steven F. Alder (#00033)

Kassidy J. Wallin (#14360)

Assistant Utah Attorneys General

Utah Division of Oil, Gas and Mining

CERTIFICAT OF DELIVERY

The undersigned does hereby certify that a true and correct copy of the foregoing
MEMORANDUM REGARDING THE STATUS OF THE UTAH COAL PROGRAM
RULES GOVERNING AN AWARD OF ATTORNEY FEES was delivered to the following
persons at the addresses shown this 19th day of February, 2013

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Kent Burggraaf, Esq. (deputyattorney@kane.utah.gov) Kane
County Attorney



Exhibit A



GARY R. HERBERT
Governor

GREGORY S. BELL
Lieutenant Governor

State of Utah

DEPARTMENT OF NATURAL RESOURCES

MICHAEL R. STYLER
Executive Director

Division of Oil, Gas and Mining

JOHN R. BAZA
Division Director

February 13, 2013

Mr. Al Klein, Regional Director
Office of Surface Mining, Reclamation, and Enforcement
1999 Broadway, Suite 3320
Denver, CO 80202

SUBJECT: Provisions Governing Awards for Attorney Fees

Dear Mr. Klein:

I am writing on behalf of the Division of Oil, Gas and Mining ("DOGM") to provide information regarding the provisions governing awards for attorney fees as contained in the currently published statutes and rules of the Utah Coal Regulatory Program and the statutes and rules as originally approved by the Office of Surface Mining, Reclamation, and Enforcement ("OSMRE").

Approximately three weeks ago, DOGM staff received an email inquiry from a staff member of OSMRE to assist in determining the specific language and history of attorney fee provisions within Utah statute and rules. Following that inquiry, DOGM researched historical records of the statutory construction and related rulemaking associated with Utah receiving approval for primacy delegation from OSMRE that occurred in 1981. The following narrative provides explanation of DOGM's research as best as we can determine.

It appears that the approved rule governing an award of attorney fees was inadvertently omitted from the printed version compiled in January 1982 and then omitted from subsequent published versions of the rules of procedure of the Board of Oil, Gas, and Mining ("the Board"). [Note: the Board is a policy-making and adjudicative body composed of seven citizen members appointed by the Governor of Utah. It has the statutory authority to adopt rules and issue decisions that dictate how DOGM conducts its responsibilities.] In 1980, OSM clearly required, prior to approval of the Utah program, that the Board adopt a rule equivalent to the federal rule governing awards of fees. In response the Board proposed and published Board Rule B-15 that incorporated the federal rule; provided notice and opportunity for public comment on the proposed rule; and unanimously adopted that rule and included it as part of the program submitted to OSM for approval. This rule, Board Rule B-15, was part of the Utah Coal Program conditionally approved by the Secretary on January 21, 1981. In our review of the records, we have not been able, as of this time, to find any evidence that the B-15 rule on attorney fees was specifically ever revoked or modified by the Board or that any proposed change omitting the rule was submitted to OSMRE for approval as required by 30 C.F.R. § 732.17(g). However, commencing with a compiled version of the Board's rules dated January 1, 1982, it



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OSMRE
February 13, 2013

appears that the rule was inadvertently omitted from that version and later published versions of the Board's procedural rules.

As you are aware, this question has arisen as a result of the pending claim for attorney fees filed by Alton Coal Development, LLC ("Alton"), the operator of the Coal Hollow mine as part of the litigation originally brought by the Sierra Club, Natural Resources Defense Council (NRDC), Southern Utah Wilderness Alliance (SUWA), and the National Parks Conservation Association (NPCA) (collectively referred to herein as "NRDC"). At the conclusion of the unsuccessful challenge to the permit approval decision and the appeal to the Utah Supreme Court, Alton filed its claim for fees pursuant to our statutory provision at Utah Code §40-10-22(3)(e). Alton asserted that the Utah Program did not include rules governing awards of attorney fees and that the statutory language providing for an award to the prevailing party governed the decision. NRDC argued that the award of fees to an operator required a finding that the citizen group's appeal was made in bad faith. DOGM elected not to join in the argument.

NRDC has apparently researched the early records relating to the approval of the Utah Program. The results of their research were shared with DOGM just shortly before NRDC sent a letter to the Director of OSMRE on February 5, 2013, asking that OSMRE take action to intervene. DOGM has made an effort to quickly review the information provided to us and to check other sources. We have also asked Alton's counsel to respond to the claim that the Utah attorney fee rule had been inadvertently omitted from the currently published rules. In response, Alton points to the Federal Register of July 19, 1995 in which OSMRE reviewed and approved the statutes and one of the rules related to fees. They argue that the Secretary's statement of approval in 1995 included approval of the statute and rules governing the awarding of attorney fees. DOGM has the opinion that the 1995 review was initiated to address other changes to the statutes and rules and did not directly examine the effect of the absence of an attorney fee rule from the Utah program and compare it with the requirements of the Act.

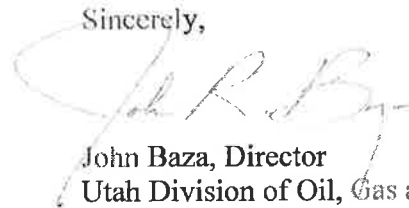
Accordingly, it is DOGM's desire to cure any rule deficiencies between what is currently codified and what OSMRE approved and intended to remain in effect since 1981. DOGM will request the Board to take such action as is necessary under the Utah Rule Making Act (Utah Code § 63G-3-101 et seq.) to reinstate and publish the rules in the Utah Administrative Code. Hopefully this action will resolve any questions that OSMRE may have concerning the consistency of the Utah Program and further actions by OSMRE will not be necessary.

Notwithstanding this plan of action, OSMRE should be aware that the Board has scheduled a hearing and argument on February 27, 2013, to address the appropriate legal standard to be applied in determining the award of fees in the case before the Board. DOGM will communicate to the Board, its conclusions regarding the status of the attorney fee rules and its intentions as set forth in this letter. DOGM cannot preempt the Board's authority to decide

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February 13, 2013

the question in that case and DOGM must caution that its powers to address what it believes to be an oversight is subject to the Board's ability to direct it to take other actions. However, DOGM asks that OSMRE consider the results of the Board's hearing on February 27th as it takes additional steps.

Sincerely,

A handwritten signature in dark ink, appearing to read "John Baza", is written over a faint, larger signature that appears to read "John R. Baza".

John Baza, Director
Utah Division of Oil, Gas and Mining

JRB:er

cc: Steve Alder, AAG
Dana Dean, DOGM
Steve Schneider, DOGM

Exhibit B



United States Department of the Interior

OFFICE OF SURFACE MINING
Reclamation and Enforcement
Western Region Office
1999 Broadway, Suite 3320
Denver, CO 80202-3050



February 15, 2013

John Baza
Division of Oil, Gas and Mining
1594 West North Temple
Salt Lake City, UT 84116

Dear Mr. Baza,

Thank you for your letter dated February 13, 2013. That letter supports our mutual understanding that the portion of your approved program corresponding to 43 CFR 4.1290 through 4.1296 was inadvertently never published within Utah's official regulations. For the reasons outlined below, the Office of Surface Mining Reclamation and Enforcement (OSM) does in fact consider that language to be an active part of your approved program.

The Utah Division of Oil Gas and Mining (DOGM) submitted language consistent with 43 CFR 4.1290 through 4.1296 to OSM as part of its revised permanent program re-submittal dated December 19, 1980 (received December 23, 1980, see attachment). OSM approved DOGM's program on January 21, 1981, finding that *"the state's amended regulations, UMC / SMC 900(b)(ix), which adopt the Board's Rules of Practice and Procedure contain amendments to Rule B-15 meet the federal requirements for discovery, intervention and award of attorney fees. (The Secretary) therefore finds that Utah's provisions are consistent with 43 CFR Part 4"* (46 FR 5899) (Emphasis added). You are correct in your understanding that the subsequent state program amendment approved on July 19, 1995 (60 FR 37002) did not directly examine or address the effect of this absent language. OSM has never received, reviewed, or approved any proposal from DOGM to amend or nullify this approved language. As you are aware, 30 CFR 732.17(g) prohibits proposed changes to the laws or regulations that make up an approved State program from taking effect until approved by OSM as an amendment. We therefore consider the UMC/SMC 900(b)(ix) standards and criteria for the award of costs and expenses to be part of the approved State program and expect the State to adhere to those standards and criteria.

As noted in your letter, there is currently a pending claim for recovery of attorney fees before the Utah Board of Oil, Gas, and Mining ("the Board"). The claim has been filed by Alton Coal Development, LLC against the Utah Chapter of the Sierra Club, Natural Resources Defense Council, Southern Utah Wilderness Alliance, and the National Parks Conservation Association. Since OSM considers the provisions of UMC/SMC 900(b)(ix) to be currently in effect, we would expect the Board to implement these standards and criteria in determining the award of fees currently requested by Alton Coal Development from the Utah Chapter of the Sierra Club, et al. Failure on the part of the State to implement any part of its approved program would prompt

OSM to respond under the authority of 30 CFR 733.12. If such action becomes necessary, we will issue written notification to you providing (1) sufficient information to allow you to determine what portions of the program we believe are not being effectively implemented, administered, maintained, or enforced, (2) the reasons for such belief, and (3) the time period in which you must accomplish any necessary remedial actions. You would be entitled to an informal conference pertaining to the facts or the time period for accomplishing remedial actions. If we were unable to cause this language to be effectively implemented through this process, then we may impose Federal enforcement for this part of your approved program.

I appreciate your proactive efforts toward effectively implementing your approved program in its entirety and look forward to working cooperatively with you to rectify this long-overlooked error. I will note that, because the Utah Administrative Code was reorganized, "UMC/SMC 900(b)(ix), Rule B-15" is no longer a valid citation for this language. Moreover, the formal codification of the approved language within the Utah Administrative Code will require you to submit notification to us in accordance with 30 CFR 732.17(b)(3).

Please feel free to contact Jeff Fleischman at (307) 261-6550 or jfleischman@osmre.gov if you have any questions or require our assistance in this process.

Sincerely,



Allen D. Klein
Western Region Director

Attachment (1) December 23, 1980 program proposal excerpt

CC: Dana Dean, DOGM
CC: Jeff Fleischman, DFD
Joe Pizarchek, Director OSM

Exhibit C

Snell & Wilmer
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February 11, 2013

John Baza
Director
Utah Division of Oil, Gas & Mining
1594 West North Temple, STE 1210
Salt Lake City, UT 84116

Re: Request for Stay of Response to OSM Consistent with Stipulated Briefing
Schedule, Docket No. 2009-019

Dear Director Baza:

We understand that the federal Office of Surface Mining Reclamation and Enforcement ("OSM") recently contacted the Division regarding the status of Utah's fee-shifting statute set forth at Utah Code §40-10-22(3). OSM's inquiry was in response to a letter dated February 5, 2013 from the Natural Resources Defense Council ("NRDC") which incorrectly alleges that a fee shifting rule adopted by Utah in 1980 is still in effect. Contrary to NRDC's one-sided allegations, Rule B-15 is not in effect and is not codified in the current Board Rules of Practice and Procedure, Utah Administrative Code, Rule 641. See Utah Administrative Rulemaking Act, 63G-3-101 et seq. Section 63G-3-202(1) of the Act provides that an agency's rules are "not enforceable unless . . . made as a rule in accordance with the requirements of this Chapter." The Utah Administrative Rulemaking Act was not in effect in 1980 and there is no administrative record of the adoption or reconfirmation of Rule B-15 in accordance with that Act. Further, under the terms of the Rulemaking Act, rules sunset each year unless specifically continued by action of the Board. Utah Code 63G-502(2)(a) Rule B-15 has not been renewed for more than 30 years and is no longer in effect.

It is our understanding that the Division may be preparing a separate response to the OSM letter. On behalf of Alton Coal Development, LLC, we request that the Division not respond at this time and adhere to the Board's Order regarding the schedule for briefing and argument of the standards appropriate to the award of attorney's fees, now pending before the Board in Docket No. 2009-019. The Board's Scheduling Order was agreed upon by all parties, including the Division, to specifically address this legal question and will be fully addressed in our responsive brief due on February 18, 2013 and in argument before the Board scheduled for February 27, 2013. Any action by the Division responding to OSM on this matter is premature

John Baza
February 11, 2013
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until Alton has had a chance to respond and the Board has taken argument and enters a ruling on the applicable standard under the Utah Coal Program.

We would appreciate an opportunity to meet with you to review this matter further.

Very truly yours,

A handwritten signature in black ink, appearing to read 'D. Dragoo', with a stylized flourish at the end.

Denise A. Dragoo

cc: Board Chairman James Jensen
Steve Alder, Esq.
Michael Johnson, Esq.
Sharon Buccino, Esq.
OSM Director, Joseph Pizarchik
OSM Regional Director, Al Klein
OSM Denver Field Division Manager, Jeff Fleischman

Encl.
16590636.1